

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

GILBERTO VALLE,

Defendant.

USDC SDNY
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ORDER

12 Cr. 847 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

On February 14, 2013, the Court granted the Defendant leave to conduct a deposition of Sergey Merenkov pursuant to Fed. R. Crim. P. 15. (Feb. 14, 2013 Tr. at 40) Merenkov is a Russian national who resides in Moscow. (February 7, 2013 Gatto Ltr. (Dkt. No. 89) at 1) Merenkov is the founder and webmaster of darkfetishnet.com (“DFN”), the website on which Valle met his alleged co-conspirators and the website on which some of the allegedly incriminating chats took place. (Merenkov Decl. ¶ 2; Feb. 7, 2013 Gatto Decl. ¶¶ 3-4)

On February 18, 2013, Valle waived in writing his right to be present at Merenkov’s deposition. (Feb. 24, 2013 Gatto Decl. (Dkt. No. 110) ¶ 3; Exh. B) On February 19, 2013, the parties deposed Merenkov by videoconference. The deposition was videotaped. (*Id.* ¶ 4) As a result of damage sustained during Hurricane Sandy, the Court does not presently have the capability to conduct international videoconferencing. (*Id.* ¶ 5) Accordingly, it is not possible to have Merenkov testify live by videoconference at trial. In its February 14, 2013 ruling, the Court found that Merenkov’s attendance at

trial could not be obtained. (Feb. 14, 2013 Tr. at 37-38) The Government does not oppose admission of the Merenkov deposition at trial. (Feb. 26, 2013 Govt. Ltr.)


For all these reasons, the videotaped deposition of Merenkov will be admitted into evidence as prior testimony pursuant to Fed. R. Evid. 804(b)(1). The transcript of Merenkov's testimony will not be admitted into evidence. Because it is important that the jury focus on the videotape, and particularly on the witness's demeanor in answering questions, the Court does not intend to distribute the transcript to the jury as an aid. See Tr. at 747-49.

Set forth below are the Court's rulings on the parties' objections to portions of the Merenkov deposition and to exhibits used at the deposition:

Objection	Ruling
18 (Exh. A)	Exhibit A will not be admitted. Exhibit A shows the DFN home page as it is now, not at the relevant time period.
26:8	Overruled. This is an example of fantasy role play over the Internet and is relevant to this case.
34:6	Sustained. Lack of foundation and personal knowledge; irrelevant.
36:12 (Exh. B)	Sustained. Relevance. Defendant failed to establish that the terms of service were the same in 2012.
38:11	Sustained. Lack of foundation and personal knowledge; leading.
39 (Exh. C)	Overruled. While the screen shot of the DFN home page is from December 23, 2012 – outside the relevant time period – the policy discussed was in place during the relevant time period.
44 (Exh. D)	Overruled. Exhibit D reflects a notice posted on DFN in mid-2012, during the relevant time period.
50:4	Sustained. Irrelevant.
51:24-52:18	Should be deleted.
53:23	Overruled.
54:7	Overruled.
59:14	Sustained. Lack of foundation.
63:6	Overruled.
71:4	Overruled.
72:22	Overruled.
78:12-13	Sustained.
78:24	Overruled.
79:2	Sustained. Leading.
85:12-end	Should be deleted.

Dated: New York, New York
March 2, 2013

SO ORDERED.



Paul G. Gardephe
United States District Judge